IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:	Palmieri et al.	Docket No.:	2006P26237 US
Application No.:	10/813,604	Examiner:	WRIGHT
Filed:	3/31/2004	Art Unit:	1797
Customer No.:	26474	Confirmation No.:	4357

For: Multipath access system for use in an automated immunoassay analyzer

Honorable Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

Reply to Notice Non-compliant Appeal Brief

Sir:

This is a reply to the notice of Non-compliant Appeal Brief mailed October 19, 2009.

REMARKS

The Notice mailed October 19, 2009, questions whether the programmable controller recited in independent claims 27 and 39 is disclosed in the specification.

Some confusion seems to have occurred. The Notice mailed October 19, 2009, asserts the Appeal Brief cites page 2, lines 24 – page 3, line 2 as corresponding to the claimed structure and function of the programmable controller. This statement is not accurate.

The Appeal Brief filed August 06, 2009, explained independent claim 27 is directed to a multipath access system for use in an automated immunoassay analyzer[1], comprising: (a) a transport device,[2] (b) a transfer station,[3] and (c) a programmable controller.[4] The transport device comprises (i) means for holding a plurality of vessels,[5] and (ii) means for moving the vessel holding means in a continuous loop.[6] The transfer station comprises a means for moving vessels to and from the vessel holding means.[7] The programmable controller is programmed to determine an individual path along the continuous loop for each of the vessels.[8] The determination of each path is based on a resource requirement associated with each vessel.[9]

The Appeal Brief filed August 06, 2009, explained independent Claim 39 is directed to a multipath access system for use in an automated immunoassay analyzer[10], comprising: (a) a transport device[11], comprising (i) a plurality of vessel holders each for

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[1] Specification page 2, lines 10 – 15.
[2] Specification page 3, lines 13 – 14.
[3] Specification page 3, lines17 – 19.
[4] Specification page 3, lines 19 – 23.
[5] Specification page 3, lines 13 – 14; FIG. 2 illustrates Vessel Holding Member 207; and FIGs. 7 and 8, illustrating embodiments having multiple transport devices each comprising means for holding a plurality of vessels.
[6] Specification page 3, lines 13 – 16, FIG. 2 illustrates Incubator Belt 202, and FIGs. 7 and 8 illustrate embodiments having multiple transport devices each comprising means for holding a plurality of vessels, and Incubator Chains 802. At page 14, lines 4 – 14, the specification discusses various incubator belt arrangements.
[7] Specification page 5, lines 18 – 23; page 9, lines 9 – 11; 20A and 20B in FIG. 2, page 10, line 5 – page 11, line 16. FIGs. 3A, 3B, 3C, 3D, 4A, 4B, 4C, and 4D also illustrate means for moving vessels to and from the vessel holding means.
[8] Specification page 2, line 24 – page 3, line 2.
[9] Specification page 2, line 24 – page 3, line 2.
[10] Specification page 2, lines 10 – 15.
[11] Specification page 3, lines 13 – 14.

holding a vessel[12], and (ii) a mechanism for moving the vessel holders in a continuous loop,[13] (b) a transfer station, comprising a transfer shuttle, positioned to slide in a direction perpendicular to a portion of the transporter device, for moving vessels to and from the vessel holders[14], (c) a programmable controller, programmed to determine an individual path along the continuous loop for each of the vessels[15], wherein the determination of each path is based on a resource requirement associated with each vessel.[16]

In short, the Appeal Brief explained the programmable controller of claim 27 and the programmable controller, programmed to determine an individual path along the continuous loop for each of the vessels was supported in the specification on page 3, lines 19 – 23. This portion of the specification describes:

> ... a controller for controlling the transport of a vessel by the transport device from the vessel adding station to the vessel removing station based on information that (i) identifies a test or operation being performed in the vessel, and (ii) identifies a location of a vessel holder, which holds the vessel within the transport device.

Appellants respectfully submit this portion of the specification describes the programmable controller recited in claims 27 and 39. The controller can control the transport of a vessel based on information. Thus, the controller can be a programmable controller. The information can identify a test or operation being performed in the vessel. Thus, the controller can control transport of a vessel based on one or more resource requirements. The controller can control transport of a vessel from the adding station to removing station based on a test or operation performed in the vessel, and based on the

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[12] Specification page 3, lines 13 – 14; FIG. 2 illustrates Vessel Holding Member 207; and FIGs. 7 and 8, illustrating embodiments having multiple transport devices each comprising means for holding a plurality of vessels.

[13] Specification page 3, lines 13 – 16, FIG. 2 illustrates Incubator Belt 202, and FIGs. 7 and 8 illustrate embodiments having multiple transport devices each comprising means for holding a plurality of vessels, and Incubator Chains 802. At page 14, lines 4 – 14, the specification discusses various incubator belt arrangements.

[14] Specification page 5, lines 18 – 23; page 9, lines 9 – 11; 20A and 20B in FIG. 2, page 10, line 5 – page 11, line 16. FIGs. 3A, 3B, 3C, 3D, 4A, 4B, 4C, and 4D also illustrate means for moving vessels to and from the vessel holding means.

[15] Specification page 3, lines 19 – 23.

[16] Specification page 2, line 24 – page 3, line 2.

location of the vessel holder. Thus, the controller can determine a unique or individual path for each vessel.

Furthermore, Appellants respectfully submit page 7, lines 18 – 21 of the specification explains,

> [t]he technician selects the tests to be performed for each sample and enters this information via the control subsystem 101. The control subsystem 101 manages the other subsystems by sending command and control information via the control bus 102.

Page 6, lines 21 – 25 of the specification explains:

> ... a sample in a test vessel or a group of samples in a group of test vessels can follow an incubation pathway that is individually tailored to carry out the physical manipulations (e.g. dilution, mixing, emptying, etc.) and chemical reactions (e.g. by addition of chemical reactants) on an individual schedule for a particular assay.

Thus, even more explicitly, the specification makes clear that the programmable controller can be programmed to determine an individual path along the continuous loop for each vessel.

Page 14, lines 15 – 16 of the specification states, "[t]he multipath incubator of the present invention preferably operates in a manner that is depicted schematically as a series of flow charts in Figure 10...." Page 14, lines 19 – 21 of the specification states, "[t]he processes are linked to one another and are carried out by software programs that allow a choice of identity, order and timing of steps of an assay." Still referring to Figure 10, page 16, lines 28 – 29 of the specification explains, "Pentagon 11 represents a sub-scheme into which pretreatment of a sample has been programmed." Thus, there can be no doubt that the specification describes a programmable controller as recited in claims 27 and 39.

Appellants respectfully request that the Appeal be allowed to proceed without further delay.

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including Extension of Time fees, to Deposit Account 14.1437. Please credit any excess fees to such account.

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Respectfully submitted,
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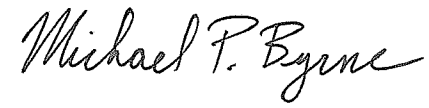

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